

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5292 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ZAKIRHUSSAIN PIRBAKSH SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2 & 3

MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 14/08/97

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 12/6/1997 passed by the respondent no. 2 being the District Magistrate u/S. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 (for short 'PBM Act').

2. The grounds of detention appearing at Annexure-B inter-alia contain the allegations with regard to how the petitioner has been committing breach of the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. Blue kerosene has been one of the essential commodities in respect of which the aforesaid Order of 1981 has been passed and has been in operation. On or around 28/5/1997 a raid was carried out on the basis of a complaint received by the Food and Civil Supplies Department, Ahmedabad City to the effect that in the open place behind the godown of Vijay Transport Company, Shiv Shakti Estate one person namely Mr. Ramswaroop was doing unauthorised business of kerosene and it was found some loaded and unloaded barrels were kept adjoining to wall and one loading Rickshaw bearing No. GJ-2T-7817 and one Tata Tempo bearing No. GJ-1-U-7282 were parked and both were found empty. At the time of inspection one Sunilbhai Shankarlal Shahu was present and in his presence 5 barrels loaded with kerosene were found. Upon verification 200 ltrs. of blue kerosene in one barrel was noticed. In other 4 barrels, three barrels contained 200 ltrs. of kerosene and one barrel contained 100 ltrs. of kerosene. Thus, in all 700 Ltrs. of kerosene was converted from blue to white kerosene. From the place of inspection other articles were also found. Sunilbhai has stated in his statement dated 28/5/1997 that those articles were belonging to Mr. Ramswaroopbhai, who confessed that he was doing the business of converting blue coloured kerosene into white kerosene and transporting the same under the instructions of Mr. Ramswaroop. The loading Rickshaw bearing No. GJ-2T-7817 was taken into custody from the possession of Sunilbhai and the seizure order was served to him. He has falsely disclosed that the said loading rickshaw was belonging to Ramswaroopbhai and the same was used for unauthorised transportation. The said loading rickshaw was found of the ownership of the petitioner. Mr. Sunilbhai has not produced any record with respect to the stock of kerosene found out at the time of inspection.

It was found that Mr. Mustak Hussain Nathubhai Waris was owner of Waris Transport, whose Tata Truck bearing No. GJ-1U-7282 was found parked at the place of inspection and he has stated in his statement that he was not concerned with the stock of kerosene seized at the

time of inspection.

Mr. Ladubhai Bhanvarlal Marwadi, owner of Tea Shop, running his tea shop near the inspection place has stated in his statement dated 2/6/1997 that Mr. Ramswaroop Poorandas Modi was doing business of kerosene and Mr. Sunilbhai was abetting him in the unauthorized business. He has further disclosed that he knows Mr. Ramswaroop and Sunilbhai and they were keeping empty and loaded barrels on the said place and they were transporting the stock of kerosene through the loading rickshaw which was seized from the place of inspection and also disclosed that the petitioner was doing the business of kerosene alongwith Ramswaroop.

The members of Shiv Shakti Estate Development Association (proposed) Mr. Jaiprakash Desai and Mr. Rameshkumar N. Agrawal in their joint statement dated 5/6/1997 have stated that the association has not given permission to Mr. Ramswaroop Modi, Sunilbhai Shahu and the petitioner for doing the business of kerosene at the place of inspection.

On 6/6/1997 the petitioner has disclosed that the petitioner was transporting the stock of kerosene loaded in barrels to the places directed by Mr. Ramswaroop Modi and Mr. Sunilbhai Shahu and the rent fixed for the same was given to the petitioner. It has been further stated that the petitioner knows Mr. Ramswaroop and Sunilbhai and it was found that since last one month the petitioner was doing unauthorised business of kerosene. The petitioner has accepted the seizure order, seizing 200 ltrs. blue coloured kerosene, 700 ltrs. white kerosene converted from blue kerosene and loading rickshaw bearing No. GJ-2T-7817. The laboratory report dated 6/6/1997 proved that the kerosene seized from the place of inspection was blue coloured which was meant for public distribution system. The petitioner has not disclosed as to how many times the stock of kerosene was transferred and from which place blue coloured kerosene was brought and at which place the stock of kerosene was delivered and thus false statement had been given by saying that Ramswaroop was coming with the petitioner and the petitioner did not know about those places where barrels were unloaded. Thus, it was found that the petitioner abetted Ramswaroop Modi and Sunilkumar Shahu in unauthorised transportation of kerosene and thereby engaged in unauthorised activity of disposing of the stock of blue coloured kerosene meant for public distribution.

3. The impugned order of detention and continued detention of the petitioner has inter-alia been challenged on the ground that the detaining authority has not applied its mind and the impugned order suffers from non-application of mind. Reference in this connection has been made to the grounds of detention themselves. They in terms refer to the petitioner having not had the licence under the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981 and at other place the grounds of detention themselves say that the petitioner has been the licence holder under the aforesaid Order, but the steps required to be taken under that order are not likely to prevent the petitioner from carrying on his activity of black marketing. It is thus clear that the detaining authority has failed to apply its mind on the facts of the grounds of detention. Having verified this position from the grounds of detention themselves Mr. S.J. Dave, Ld. A.G.P. fairly submitted that there can be no answer to the contradictory expressions of facts with regard to holding of licence appearing in the grounds of detention. In that view of the matter, the impugned order of detention must fail.

4. Following order is, therefore, passed :-

In view of what is stated above, continued detention of the petitioner under the impugned order of detention is held illegal and the same is put to end. It is directed that the petitioner-detenu-Zakirhussain Pirbaksh Shaikh shall be set at liberty forthwith, if he is not required to be detained in any other case. Rule made absolute accordingly.

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